

DISTRICT COURT OF THE VIRGIN ISLANDS  
DIVISION OF ST. THOMAS AND ST. JOHN

MRL Development I, LLC and MICHAEL R. )  
LUCHT, )  
Plaintiffs, )  
v. )  
WHITECAP INVESTMENT CORP., d/b/a )  
PARADISE LUMBER; PUTNAM LUMBER & )  
EXPORT CO.; PUTNAM FAMILY PROPERTIES, )  
INC.; and GREAT SOUTHERN WOOD )  
PRESERVING, INC., )  
Defendants. )

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WHITECAP INVESTMENT CORP., d/b/a )  
PARADISE LUMBER, )  
Cross-claimant, )  
v. )  
PUTNAM LUMBER & EXPORT CO.; PUTNAM )  
FAMILY PROPERTIES, INC.; and GREAT )  
SOUTHERN WOOD PRESERVING, INC., )  
Cross-claim defendant. )

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PUTNAM FAMILY PROPERTIES, INC., )  
Cross-claimant, )  
v. )  
WHITECAP INVESTMENT CORP., d/b/a )  
PARADISE LUMBER; and GREAT SOUTHERN )  
WOOD PRESERVING, INC., )  
Cross-claim defendants.)

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PUTNAM LUMBER & EXPORT COMPANY, )  
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Cross-claimant,                     )  
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v.                                    )  
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                                          )  
WHITECAP INVESTMENT CORP., d/b/a )  
PARADISE LUMBER; and GREAT SOUTHERN )  
WOOD PRESERVING, INC.,                )  
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Cross-claim defendant. )  
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**ATTORNEYS:**

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The Bornn Firm, PLLC  
St. Thomas, VI

**Paul Martin Platte, Esq.**

Columbia, SC  
*For the Plaintiffs,*

**Chad C. Messier, Esq.**

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*For the defendant/cross-claimant Whitecap Investment Corp.  
d/b/a Paradise Lumber,*

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Bolt Nagi PC  
St. Thomas, VI  
**Robert A. Carlson, Esq.**  
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Miami, FL

*For the defendants/cross-claimants Putnam Lumber & Export  
Co. and Putnam Family Properties, Inc,*

**Daryl C. Barnes, Esq.**

Bryant, Barnes, Moss & Beckstedt  
St. Croix, VI

**Stewart Andrew Kelly, Esq.**

Lightfoot, Franklin & White, LLC  
Birmingham, AL

*For the defendant/cross-claim defendant Great Southern Wood  
Preserving, Inc.*

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**ORDER**

**GÓMEZ, J.**

Before the Court is the Report and Recommendation of the Magistrate which addresses the motions for attorneys' fees and costs of Great Southern Wood Preserving, Inc.; Putnam Family Properties, Inc.; Putnam Lumber and Export Company; and Whitecap Investment Corporation.

Great Southern Wood Preserving, Inc. ("GSWP") is an Alabama lumber wholesaler. In addition to selling wood, it also provides chemical and pressure treatments to prevent lumber from decaying. The ostensible purpose of such treatments is to render the lumber safe for use in buildings.

From in or about 2003 until in or about 2009, GSWP regularly sold treated lumber and provided lumber-treatment services to the defendant/cross-claimant Putnam Family Properties, then doing business as Putnam Lumber and Export Company ("Putnam Family"). Putnam Family later sold its wood export business and name to defendant/cross-claimant Putnam Lumber and Export Co. ("Putnam Lumber") (Putnam Family and Putnam Lumber are collectively referred to herein as the "Putnam Defendants").

Putnam Family, a Florida corporation, was itself a lumber retailer. Putnam Family regularly sold lumber to, among others,

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the defendant/cross-claimant Whitecap Investment Corporation,

doing business as Paradise Lumber ("Paradise Lumber").

Paradise Lumber is a lumber retailer operating in St. John, United States Virgin Islands. It sold lumber that it had purchased from Putnam Family, and which had been treated by GSWP, to various consumers in St. John. These consumers used the lumber in their sundry buildings. Two of these consumers are the plaintiffs in the instant case, MRL Development I, LLC ("MRL Dev.") and Michael R. Lucht ("Lucht") (collectively "MRL").

MRL claims that the GSWP-treated lumber, sold by the Putnam Defendants, prematurely decayed, causing damage to its house, into which the lumber had been incorporated.

MRL initiated this matter on February 15, 2013, in the Superior Court of the Virgin Islands. The amended complaint (the "Complaint") named GSWP, Paradise Lumber, and the Putnam Defendants as defendants. The Complaint included six counts: (1) breach of contract against Paradise Lumber; (2) breach of contract against the Putnam Defendants; (3) breach of warranty against all defendants; (4) negligence against all defendants; (5) strict liability against all defendants; and (6) deceptive trade practices against all defendants.

On May 14, 2013, GSWP removed the action to this Court. Following discovery, and approximately one month before trial, the defendants filed several motions for total or partial

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summary judgment. On November 18, 2014, the Court granted summary judgment for all defendants. MRL appealed. In a May 17, 2016, opinion, the Third Circuit affirmed the Court's granting of summary judgment for all defendants.

GSPW, the Putnam Defendants, and Paradise Lumber now move for attorneys' fees and costs pursuant to 5 V.I.C. § 541 (the "motions"). GSPW seeks \$221,962 in attorneys' fees and \$30,531 in costs. The Putnam Defendants seek \$136,494 in attorneys' fees and \$37,896.43 in costs. Paradise Lumber seeks \$230,456.50 in attorneys' fees and \$24,607.49 in costs. MRL objects to an award of attorney's fees and costs. On February 13, 2017, the Court referred the motions to the Magistrate Judge for a Report and Recommendation.

The Magistrate has since submitted a report in which she recommends that GSPW be awarded \$174,410 in fees and \$21,127.16 in costs; the Putnam Defendants be awarded \$114,684.50 in fees

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and \$15,007.47 in costs; and, that Paradise Lumber be awarded \$172,377.75 in fees and \$15,398.36 in costs.

Upon de novo review of the record, the Court agrees with the Magistrate Judge. Accordingly, it is hereby

**ORDERED** that the Report and Recommendation of the Magistrate Judge is **ADOPTED**; it is further  
**ORDERED** that Great Southern Wood Preserving is awarded \$174,410.00 in fees and \$21,127.16 in costs; it is further  
**ORDERED** that Putnam Family Properties, Inc. and Putnam Lumber and Export Company collectively<sup>1</sup> are awarded \$114,684.50 in fees and \$15,007.47 in costs; and it is further  
**ORDERED** that Whitecap Investment Corp. is awarded \$172,377.75 in fees and \$15,398.36 in costs.

s/ \_\_\_\_\_  
CURTIS V. GÓMEZ  
District Judge

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<sup>1</sup> Putnam Family Properties, Inc. and Putnam Lumber and Export Company share a unity of interest. They also share the same counsel in this matter.